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JAN 03 2005

**OFFICE OF PETITIONS**

In re Application of  
Hugues Cremer et al.  
Application No. 10/728,105  
Filed: December 4, 2003  
Attorney Docket No. DP-308260

: DECISION REFUSING STATUS  
: UNDER 37 CFR 1.47(a)

**CORRECTED DECISION<sup>1</sup>**

This is in response to the petition under 37 CFR 1.47(a), filed June 1, 2004.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to respond, correcting the below-noted deficiencies. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on December 4, 2003, naming Hugues Cremer, Michael Sanchez and Manfred as joint inventors, but without a signed declaration.

Accordingly, on March 5, 2004, a "Notice To File Missing Parts of Application" was mailed, requiring *inter alia* a properly executed oath or declaration.

In response, on June 1, 2004, the present petition was filed with a one month extension of time. Petitioners seek status under 37 CFR 1.47(a) because joint inventor Manfred Schastok is no longer employed by the assignee and that while the application papers were mailed to Mr. Schastok's last known address, the papers were returned undeliverable.

A grantable petition under 37 CFR 1.47(a) requires:

<sup>1</sup>Decision mailed December 13, 2004 had an incorrect application number. This decision is re-mailed only for the purposes of correcting the application number.

- (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee; and
- (4) a statement of the last known address of the non-signing inventor.

The present petition lacks items (1) (2) (3) and (4).

Petitioners must present a showing that diligent efforts have been made to locate the non-signing inventor.<sup>2</sup> Petitioners claim that Mr. Schastok no longer lives at the last known address to which the application materials were sent, and subsequently returned as undeliverable. Petitioners must however provide details, in an affidavit or declaration of facts by a person with first hand knowledge of the details, of the additional efforts to locate Mr. Schastok, such as Internet, e-mail, or telephone directory searches, which have been undertaken to locate him, send or give a copy of the application papers to him, and request that he sign and return the declaration. If repeated attempts to contact Mr. Schastok by telephone, mail, and e-mail, are unsuccessful, petitioners will have established that Mr. Schastok cannot be found despite diligent efforts.

If Mr. Schastok refuses in writing to sign the declaration, petitioners should provide a copy of that written refusal with any renewed petition. If a verbal refusal to sign is made to a person, details should be given in an affidavit or declaration of facts by a person having first hand knowledge of the facts of refusal.

As to item (2), an oath or declaration for the patent application in compliance with 37 CFR 1.63 has not been presented. See the Notice of Informal Application mailed December 7, 2004 which indicates that the oath or declaration, filed June 1, 2004, fails to indicate the residence and complete mailing or post office address for each of the inventors.

The petition fee pursuant to 37 CFR 1.47 and 37 CFR 1.17 at the time the petition was filed was set at \$130.00. The petition fee will be charged to deposit account no. 50-0831.

With respect to item (4), the last known address of inventor Schastok has not been provided as required by 37 CFR 1.47. Petitioners must provide a statement of the last known address of the nonsigning inventors. That address should be the last known address at which the inventors customarily receive mail. Ordinarily, the last known address will be the last known residence of the nonsigning inventor.

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<sup>2</sup>MPEP 409.03 (d).

